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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE NATIONAL SECURITY AGENCY TELECOMMUNICATIONS RECORDS LITIGATION This Document Solely Relates To: *Al-Haramain Islamic Foundation* *et al*. *v. Obama*, *et al*. (07-CV-109-VRW)	No. M:06-CV-01791-VRW **DECLARATION OF JOHN F. HACKETT, OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE RE: GOVERNMENT DEFENDANTS' REPORT ON DECLASSIFICATION REVIEW** Honorable Vaughn R. Walker

I, John F. Hackett, hereby declare and state:

1. I am the Director of the Information Management Office of the Office of the Director of National Intelligence ("ODNI."). I have served in this position since April 3, 2006. Prior to my current assignment, I held various senior and supervisory roles in ODNI, including Director of Information Management for the National Counterterrorism Center. As part of my current responsibilities, I develop, implement, and manage programs to provide guidance for the Intelligence Community's records, classification, declassification, and Freedom

of Information Act officers. In addition, under a written delegation of authority pursuant to Section 1.3(c) of Executive Order ("E.O.") 12,958 as amended, I hold original classification authority at the TOP SECRET level. *See* E.O. 12,958, 60 Fed. Reg. 19,825 (Apr. 17, 1995), as amended by E. O. 13,292, 68 Fed. Reg. 15,315 (Mar. 25, 2003). The statements herein are based on my personal knowledge and information obtained by me in the course of my official duties.

2. I have been advised that the Court, by Order dated January 5, 2009, directed the Government to review various classified submissions in this action and determine whether they may be declassified. The purpose of this declaration is to provide an unclassified discussion of the current classification status of information described in the classified declaration of the Director of National Intelligence ("DNI") submitted in this case on June 21, 2006. *See* Classified Declaration of John D. Negroponte, Director of National Intelligence (June 21, 2006). In connection with the Court's Order, I undertook a current review of the classification status of that declaration and the information it describes, and have determined that the classified information described by the DNI is currently classified in accordance with the standards set forth in Executive Order 12,958, as amended. I have executed a classified declaration, solely for the Court's *in camera*, *ex parte* review, which addresses these issues further.

The Office of the Director of National Intelligence

3. The position of Director of National Intelligence was created by Congress in 2004. The DNI is the head of the U.S. Intelligence Community and principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to the national security. *See* Intelligence Reform and Terrorism Prevention Act of 2004, § 1011, Pub. L. No. 108-458, 118 Stat. 3638, 3644 (amending 50 U.S.C. § 403). The DNI is charged specifically with protecting intelligence sources and methods from unauthorized disclosure, *see* 50 U.S.C. § 403-1(i)(1). The DNI establishes and implements guidelines for the Intelligence Community for the classification of information under applicable law, Executive Orders, or other Presidential directives. *See id.* § 403-1)(i)(2)(A), (B). The DNI is also responsible for the establishment of uniform standards and procedures for the grant of

access to "Sensitive Compartmented Information" ("SCI") to any officer or employee of the government and for ensuring consistent implementation of those standards by the government. *See id.* § 403-1(j)(1), (2). As part of the Office of the Director of National Intelligence, I assist the DNI in carrying out these responsibilities.

Declassification Review of Classified Information

4. In general, unclassified terms, the classified information at issue in this case includes:

(i) information regarding the specific nature of the al Qaeda threat;

(ii) information regarding the Terrorist Surveillance Program;

(ii) information that would tend to confirm or deny whether the Plaintiffs in this action have been subject to surveillance under the Terrorist Surveillance Program or under any other government program;

(iv) information pertaining to a sealed document before the Court.

See [Public] Declaration of John D. Negroponte, Director National Intelligence (June 21, 2006), ¶ 11. DNI Negroponte's classified declaration describes the information at issue in more detail.

5. Based on my current review, pursuant to the standards set forth in E.O. 12,958, as amended, I have determined that the DNI's classified declaration and the classified information it contains remains currently classified under the standards set forth in that Executive Order. *See* E.O. 12,958, Section 1.1. This information is owned by, produced for, or is under the control of elements of the U.S. Intelligence community and is subject to protection under Section 1.4 of the Order, including as information related to intelligence activities, sources or methods. In addition, the DNI's declaration includes information that continues to be Sensitive Compartmented Information ("SCI"). SCI control systems are used for information or material "concerning or derived from intelligence sources, methods, or analytical processes that requires such information to be handled within formal access control systems" established by the Director of National Intelligence ("DNI"). *See* 50 U.S.C. § 435a(f)(5) (describing SCI information). Because of the exceptional sensitivity and vulnerability of the information, these safeguards and access requirements exceed the access standards that are normally required for information of

the same classification level. I have also determined that disclosure of this information could reasonably be expected to result in damage to the national security. I am unable to describe further on the public record the basis for my determination with respect to the particular information I reviewed in connection with responding to the Court's January 5, 2009 Order without disclosing the very classified information at issue. The classified submissions by the Government in this case describe the harms to national security at issue in detail. Under E.O. 12,958, information is subject to declassification if it no longer meets the standards for classification under the Order and, thus, there is an authorized change in its status from classified to unclassified. *See* E.O. 12,958, Section 3.1(a), Section 6.1(k). The classified information described in unclassified terms above continues to meet the standards for classification under the Order because disclosure reasonably could be expected to cause harm to national security.

6. As noted above, I have executed a classified declaration, solely for the Court's *in camera, ex parte* review, which addresses the foregoing matters further.

John F. Hackett
Office of the Director of National intelligence

Executed this 27th day of February, 2009.